IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 326 OF 1992

Hazrat Pir Sayyad Shamna
Mirasaheb Darga ..Petitioner

versus

Shri Mehboob Hazratsa Sharif
Kamasal & Ors. ..Respondents

Mr. C. G. Gavnekar for the Petitioner.

Mr. S. K. Chinchalikar, AGP for the Respondents No.3 - State.

CORAM : D. G. DESHPANDE, J.

DATE : 12TH SEPTEMBER, 2006

ORAL ORDER :

1. Heard Advocate for the Petitioner and learned AGP for the Respondents No. 3 - State.

2. This petition is filed in 1992 challenging the Order of the Joint Charity Commissioner, Pune Division, Pune, dated 18.2.1991 refusing permission to the Petitioner Trust to lease out a portion of the property. The petitioner has filed alongwith this Petition, a sketch map wherein the property of the Petitioner Trust is shown in light blue colour

and the portion sought to be leased out is shown in pink colour. Advocate for the petitioner pointed out that already there are numerous encroachments on the property of the Trust and in order to prevent further encroachments and looking to the demand made by the proposed lessee, the Charity Commissioner should have granted permission to lease out this property.

3. The Joint Charity Commissioner refused permission on the ground that the property is a part and parcel of graveyard, and, therefore, even if the Trust is going to get income therefrom, the Petitioner Trust should not be permitted to sell the property, particularly, when the nature of the property is like Devasthan or graveyard.

4. I do not find that the reasoning given by the Joint Charity Commissioner is sustainable. It is nobody’s case that the pink portion which is to be leased out is actually used as graveyard. It is a part of the property. The graveyard is surrounded by big stone wall and this pink portion is outside the said wall and in order to prevent further encroachments and looking to the fact that there is

a very big pit just abutting this pink area, the Joint Charity Commissioner should have granted necessary permission.

5. However, it appears from the Order of the Joint Charity Commissioner that the proposed lessee has shown his willingness to deposit Rs.20,000/- and to pay monthly rent of Rs.100/- if the open space is given to him for the period of 55 years. Petition is of the year 1992. The Order of the Charity Commissioner is of 1991 and looking to the fact that 15 years have elapsed from the date of the Order of the Charity Commissioner, the proposed lessee can be put to terms and conditions. It is clarified that if the proposed lessee is not ready and willing to accept the terms and conditions, then it will be open to the Petitioner Trust to lease out the said property to any one else only on the following terms and conditions, which will protect the interest of the Petitioner Trust in longer.

6. In the result, the Petition is allowed. The impugned Order of the Joint Charity Commissioner, Pune Division, Pune, dated 18.2.1991 is set aside. The Petitioner Trust is granted permission to lease

out the pink portion, provided the proposed lessee or any one else is ready and willing to deposit Rs.50,000/- (Rupees Fifty Thousand) with the Petitioner Trust; the lease period is fixed for 25 years, initially. The monthly rent should not be less than Rs.500/- per month and the rent should be renewable after five years at the rate of 20% of the original rent per annum. The proposed lessee or lessee whoever he may be will not make any permanent construction and will be liable to be evicted after the period of lease, if the lease is not renewed upon such terms and conditions as are found proper in the circumstances by the Petitioner Trust. The petition is allowed. Rule is made absolute accordingly.

(D.G. DESHPANDE, J.)